

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SEAN VEST,	:
Plaintiff,	:
v.	:
UNITED STATES OF AMERICA	: Case No. 3:12-cv-256-KRG-KAP
(BUREAU OF PRISONS),	:
Defendant	:

Report and Recommendation

Recommendation

Plaintiff Sean Vest, a federal prisoner now at F.C.I. Loretto, filed a Federal Tort Claims Act complaint alleging the loss of property during his transfer to Loretto from F.P.C. Terra Haute. Plaintiff's motion to proceed *in forma pauperis*, docket no. 3, should be denied, and the complaint dismissed unless the plaintiff funds it himself.

Report

Vest alleges the total cost of his lost property is \$229.90. The filing fee alone is \$350.00. The grant of *in forma pauperis* status is more than a ministerial act to be taken upon a claim of indigence: it is the judicial commitment of public resources to a private litigant on the theory that the public good is advanced by the pursuit of a meritorious (or at least colorable) claim. The Court of Appeals for the Third Circuit examined one of the limits on grants of *in forma pauperis* status in Deutsch v. United States, 67 F.3d 1080, 1092 (3d Cir.1995). In the course of affirming the dismissal of a federal inmate's Federal Tort Claims Act complaint alleging that the United States owed him \$4.20


because corrections officers had taken his pens and not returned them, the circuit observed:

Aside from the fact that we are satisfied that Deutsch's claim lacks meaning to him as a frequent filer of frivolous complaints, we find that **a court's obligation to guard its resources counsels dismissal of this claim.** Indeed, this claim lacks meaning from the court's point of view such that dismissal would be warranted even if the claim were brought by a litigant who had never before filed an *in forma pauperis* suit in federal court. **Significantly, the reasonable paying litigant would not find justification for the expense of filing suit in a moral or other non-monetary victory over the defendant. ... [T]he public simply should not be paying for an indigent litigant to pursue in federal court a claim that the paying litigant is practically barred from pursuing.**

(my emphasis). Deutsch stands for the proposition that the Court should examine the underlying controversy when there is a request for *in forma pauperis* status. The subsequent passage of the Prison Litigation Reform Act in 1996, making the payment of the filing fee payable in installments but not waivable, only strengthens that proposition for *in forma pauperis* requests by inmates. Plaintiff attempts to boost the monetary value of his controversy by a conclusory assertion that punitive damages could be awarded, but punitive damages are not available under the FTCA. The complaint should be dismissed without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have fourteen days to serve and file written objections to this Report and Recommendation.

DATE: 1/30/13



Keith A. Pesto,
United States Magistrate Judge

Notice to counsel of record by ECF and by U.S. Mail to:

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F.C.I. Loretto
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Loretto, PA 15940